

Message Text

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PAGE 01 STATE 171296

62

ORIGIN EB-11

INFO OCT-01 EA-11 ISO-00 L-03 CAB-09 CIAE-00 COME-00

DODE-00 DOTE-00 INR-11 NSAE-00 RSC-01 FAA-00 SSO-00

INRE-00 NSCE-00 SS-20 NSC-07 USIE-00 PRS-01 PA-04

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L/EB - MR. GAITHER

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA NIACT IMMEDIATE

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E.O. 11652: N/A

TAGS: EAIR, RP

SUBJECT: CIVAIR - BILATERAL NEGOTIATIONS

REF: MANILA 9332, STATE 170102 AND 170737

1. IN VIEW OF CONCERNS EXPRESSED BY EMBASSY IN REFTEL PERHAPS IT IS TIME TO BACK OFF FROM TREES AND CONSIDER THE ESSENTIAL AMERICAN INTERESTS AND WHERE WE GO FROM HERE. WE HAVE AGREEMENT ON MAJOR PART OF ISSUES THAT HAVE BEEN UNDER NEGOTIATION, INVOLVING WIDE BODY AIRCRAFT, PASSENGER SERVICES, AND ROUTE EXTENSION. REMAINING PROBLEMS FOCUS ENTIRELY ON CARGO SERVICES.

2. DEPARTMENT APPRECIATES DIFFICULTIES EMBASSY IS ENCOUNTERING IN THIS FIELD. USG BASIC PREOCCUPATION AS EMBASSY IS AWARE, IS TO AVOID ENTERING INTO ANY ARRANGE-
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PAGE 02 STATE 171296

MENT WHICH WOULD PLACE EXISTING US ALL CARGO SERVICES,

INCLUDING FLYING TIGERS, AT RISK. WE CLEARLY RECOGNIZE
THE UNUSUAL CIRCUMSTANCES OF THE GOP APPROVAL OF THE
FT PERMIT AND THE RELATIONSHIP OF THOSE CIRCUMSTANCES TO

THE CURRENT GOP (AND MOST PARTICULARLY PAL) POSITION,
BUT IT SIMPLY IS NOT POSSIBLE FOR THE USG TO REFRAIN

FROM FULLY PROTECTING THE INTERESTS OF A DULY CERTIFICATED
CARRIER WHOSE LEGAL RIGHTS UNDER US LAW IN THE PHILIPPINE

MARKET ARE NO LESS THAN THOSE OF OTHER US CARRIERS. NEED
FOR SUCH PROTECTION ACCENTUATED BY GOP NOTE OF JULY 27
CITING POSSIBLE CANCELLATION FTL PERMIT.

3. IN THE NEGOTIATIONS FOR THE INTERIM AGREEMENT WE
HAVE SOUGHT OPTIMALLY AN EXPLICIT UNDERSTANDING FROM THE
GOP WHICH WOULD PROTECT EXISTING US ALL CARGO SERVICES
AT LEAST UNTIL ALTERNATIVE ARRANGEMENTS WERE AGREED.
ON EMBASSY ADVICE THAT THIS WAS NOT NEGOTIABLE, WE HAVE
ATTEMPTED TO FIND A FORMULA WHICH WOULD AT LEAST PROVIDE
A LEGAL BASIS FOR RESPONSIVE ACTION UNDER PART 213 SHOULD
THE GOP UNILATERALLY DECIDE TO ELIMINATE OR REDUCE US
ALL CARGO SERVICES. WE HAVE PROVIDED THE EMBASSY
WITH THOSE OPTIONS IN STATE 158653 BY WHICH THIS COULD
BE ACCOMPLISHED. PRESUMABLY THE OPTION SELECTED
REPRESENTED GOP CHOICE BUT THE MODIFICATION PROPOSED
BY GOP WOULD SIMPLY NOT PROVIDE US WITH THE FOUNDATION
WE NEED. PURPOSE OF AIDE MEMOIRE IS NOT TO GIVE USG
VETO OVER PHIL CAB ACTIONS, BUT TO PROVIDE LEGAL BASIS
REQUIRED TO PRESERVE OPTION ON PART OF USG TO INVOKE

PART 213 SANCTIONS IF THAT BECAME NECESSARY. PART 213
NOT AVAILABLE UNLESS THERE IS, VIOLATION OF AGREEMENT.
BASIS FOR POSSIBLE 213 ACTION, HOWEVER, WEAKENED DURING

THE PAST FORTNIGHT WITH CHANGES OF WORDING OF PROPOSED
EXCHANGE OF NOTES, ELIMINATING REFERENCES TO RECIPROCITY,
AND SUBSTITUTING "SYMPATHETIC" FOR "FAVORABLE". EFFORTS
TO SHORE UP THIS WEAKENED LANGUAGE BY OUR PROPOSED
AIDE MEMOIRE UNACCEPTABLY NEUTRALIZED BY EMBASSY'S
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PAGE 03 STATE 171296

PROPOSED REVISION. ACCORDINGLY, NECESSARY TO HAVE BEST
ALTERNATIVE SUPPORT POSSIBLE, I.E., PROPOSED AIDE MEMOIRE,
WHICH WE ASSUME IN FACT REPRESENTS FAIR STATEMENT OF
INTENT OF PARTIES. HOWEVER, IF EMBASSY BELIEVES THERE
IS MAJOR DIFFICULTY IN PUTTING AIDE MEMOIRE TO GOP AS
ORIGINALLY DRAFTED, WE ARE PREPARED ACCEPT EITHER OF
FOLLOWING ALTERNATIVES:

A. DROPPING AIDE MEMOIRE AND FINAL SENTENCE OF THE PARAGRAPH DEALING WITH ALL CARGO SERVICES REGARDING "SYMPATHETIC CONSIDERATION" IN THE BODY OF THE NOTE AND SUBSTITUTE A NEW SENTENCE WHICH WOULD READ "THIS OPTION, AND ANY SERVICES INAUGURATED UPON EXERCISE THEREOF, AS WELL AS EXISTING US ALL CARGO SERVICES, WILL BE CONTINUED PENDING COMPLETION OF THE NEGOTIATIONS MENTIONED BELOW."

B. REVISING THE FIRST PARAGRAPH OF THE AIDE MEMOIRE TO READ AS FOLLOWS:

"IN CONNECTION WITH THE EXCHANGE OF NOTES CONCLUDED THIS DATE COVERING INTERIM ARRANGEMENTS FOR AIR TRANSPORT SERVICES, IT IS THE UNDERSTANDING OF THE US GOVERNMENT THAT THE INTENT OF THIS EXCHANGE OF NOTES IS INTER ALIA TO INSURE THAT ALL CARGO SERVICES CURRENTLY OPERATED BY UNITED STATES CARRIERS AND TO BE OPERATED BY PHILIPPINE CARRIERS ON AUTHORIZED ROUTES SHALL CONTINUE PENDING COMPLETION OF NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS IN THE TALKS WHICH THEY HAVE AGREED WILL COMMENCE WITHIN NINETY DAYS OF TODAY'S DATE."

4. EMBASSY IS INSTRUCTED TO PROPOSE THE AIDE MEMOIRE LANGUAGE TRANSMITTED IN STATE 170102 OR ONE OF

THESE ALTERNATIVES WITH THE GOP AND TO REPORT GOP REACTIONS. IF NOT ALREADY CORRECTED, DATE SHOWN AS APRIL 1, 1974 IN DRAFT (MANILA 8948) SHOULD READ APRIL 1, 1975. KISSINGER

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